

§ 58-2-240. Market conduct analysis, financial analysis, and related information not public record.

(a) Notwithstanding Chapter 132 of the General Statutes, all market analysis, documents arising from market conduct action, and financial statement analysis work papers are confidential, are not open for public inspection, and are not discoverable or admissible in evidence in a civil action brought by a party other than the Department against a person regulated by the Department, its directors, officers, or employees, unless the court finds that the interests of justice require that the documents be discoverable or admissible in evidence or except as provided in G.S. 58-2-128 and G.S. 58-2-132(g) through (j). The Commissioner, however, may use market analysis, documents arising from market conduct action, and financial statement analysis work papers in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

(b) As used in this Article:

(1) "Financial statement analysis" means a set of systems and procedures designed to provide relevant information derived from basic sources of data for the purpose of evaluating the risk of an insurer's insolvency.

(1a) "Financial statement analysis work papers" means:

- a. Documents, programs, findings, and other information produced by persons employed or contracted by the Commissioner during and as part of the financial statement analysis of an insurer.
- b. Documents, programs, findings, and other information disclosed by an entity to persons employed or contracted by the Commissioner in response to an inquiry from the Commissioner during and as part of the financial statement analysis of the insurer.
- c. Documents, programs, findings, and other information obtained, during and as part of the financial statement analysis of an insurer, by persons employed or contracted by the Commissioner from or through any regulatory or law enforcement agency or the NAIC when the receipt of that information is conditioned upon the Commissioner maintaining the confidentiality of the information shared with the Commissioner.

"Financial statement analysis work papers" includes financial analysis programs and procedures; correspondence between persons employed or contracted by the Commissioner and the insurer during and as part of the financial statement analysis; memos, e-mails, and other correspondence, in any form, produced by persons employed or contracted by the Commissioner detailing findings or recommendations of the financial statement analysis; and the Actuarial Opinion Summary filed by an insurer as required by and in accordance with NAIC Annual Statement Instructions. "Financial statement analysis work papers" does not mean statements filed with the Commissioner under G.S. 58-2-165, CPA audit reports filed with the Commissioner under G.S. 58-2-205, or documents that constitute an initial filing and any supplemental filing necessary to complete a filing made by an insurer, independent of financial statement analysis.

(1b) "Market analysis" means work product arising from a process whereby persons employed or contracted by the Commissioner collect and analyze information from filed schedules, surveys, required reports other than periodic reports specifically required by statute, and other sources in order to develop a baseline understanding of the marketplace and to identify patterns

or practices of insurers that deviate significantly from the norm or that may pose a potential risk to the insurance consumer.

- (2) "Market conduct action" means any of the full range of activities, other than an examination that the Commissioner may initiate to assess and address the market practices of insurers, beginning with market analysis. Additional market conduct actions, including those taken subsequent to market analysis as a result of the findings of or indications from market analysis include: correspondence with an insurer; insurer interviews; information gathering; policy and procedure reviews; interrogatories; and review of insurer self-evaluation and compliance programs, including membership in a best-practice organization. The Commissioner's activities to resolve an individual consumer complaint or other report of a specific instance of misconduct are not market conduct actions for purposes of this section.

(c) For purposes of subdivisions (b)(1) and (b)(1a) of this section only, the term "insurer" has the same meaning as in G.S. 58-30-10(14) and includes a:

- (1) Reciprocal that is or should be licensed under Article 15 of this Chapter.
- (2) Local government risk pool that chooses to operate under Article 23 of this Chapter.
- (3) Fraternal benefit society that is or should be licensed under Article 24 of this Chapter.
- (4) Self-insurer that is or should be licensed under Article 5 of Chapter 97 of the General Statutes.

(d) Nothing in this section limits public access to financial or actuarial information or calculations filed by an insurer or other entity for rating purposes, including rate filings, deviation filings, and loss cost filings. (2005-206, s. 1; 2006-105, s. 2.4; 2007-127, s. 10.)